

REMARKS

The December 15, 2008 Office Action was based upon pending Claims 1-3, 5-9, 11, 13-16 and 21-24. This Amendment amends Claims 1, 13, and 21. Thus, after entry of this Amendment, Claims 1-3, 5-9, 11, 13-16 and 21-24 are pending and presented for further consideration.

REJECTION OF CLAIMS 1-3, 5-9, 11, 13-16 AND 21-24 UNDER 35 U.S.C. §102(B)

The Office Action rejected Claims 1-3, 5-9, 11, 13-16 and 21-24 under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,668,857 to McHale (hereinafter "McHale").

Claim 1

Claim 1 is substantially different than McHale. Applicant notes that paragraphs 2-6 of the Office Action identifies areas where the Examiner disagrees with Applicants assertions. Each of the Examiner's concerns is addressed below.

By way of background, Applicant believes it would be helpful to provide a brief summary of an embodiment of the invention as set forth in the pending patent application. As shown in Figure 1, there are five separate components in the overall system.

The five components include:

- 1) a first fax transceiver 102,
- 2) a first server 106,
- 3) a second server 110 that is connected to the first server 106 via the Internet,
- 4) a second fax transceiver 118, and
- 5) multiple subscribers that connect to the Internet via the second server 110 (not shown in Figure 1).

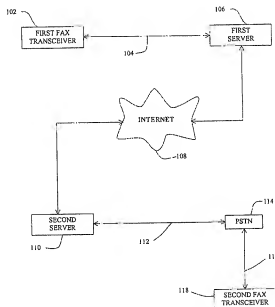


FIGURE 1

In this example, Claim 1 is directed to the second server 110. The second server 110 provides internet access services to multiple subscribers (not shown). In addition, the second server 110 receives a message via the Internet from the first server 106 with in inbound communication. The received message originated from the first fax transceiver 102.

The second server 110, in turn, sends the message via an outbound facsimile transmission to the second fax transceiver 118 via an outbound facsimile transmission. The second fax transceiver 118 is different than the subscribers seeking internet access services.

Thus, Claim 1 identifies five components:

- 1) a sender transceiver (e.g., first fax transceiver 102),
- 2) a sending server (e.g., first server 106),
- 3) a target server (e.g., second server 110),
- 4) a target transceiver (e.g., the second fax transceiver 118), and
- 5) multiple subscribers that connect to the Internet via the second server 110 (not shown).

McHale in contrast, fails to disclose these five components. In particular, the Office Action relies on the modem 30 in McHale for the basis of many of the rejections. The modem 30 in McHale, however, is in a subscriber machine 12. Also in McHale, there is no teaching of sending a facsimile to a device that is not a subscriber of Internet access services.

Furthermore, even if we assume that in McHale, one subscriber 12 can send a fax message via the central office 14 to another subscriber 12, McHale still fails to describe forwarding a message from a first server (completely missing) to a second server (perhaps the central office) via the Internet.

If we assume that the second server is the central office 14, McHale only shows the central office communicating with subscribers. Because only subscribers are

shown in McHale, McHale fails to teach delivering an outbound facsimile to a target transceiver wherein the target transceiver is different than the subscribers sending in-bound requests to the target server.

These and other differences are discussed in further detail below.

A. Providing Internet Access Services And Facsimile Services

Claim 1 is directed to a method of communicating a message via a computer network, the method comprising: providing internet access services to a plurality of subscribers with a target server by receiving with a plurality of modems connected to the target server a plurality of in-bound requests from the subscribers for access to the Internet.

For the purposes of this response, Applicant would like to assume that the target server is the central office 14 set forth in McHale. In addition, Applicant would like to assume that McHale discloses the plurality of subscribers 12 that make inbound requests for access to the Internet. In particular, the modem 30 is associated with a subscriber 12.

Claim 1, however, also identifies a target transceiver that is different than the subscribers sending in-bound requests to the target server. Thus, Applicant respectfully asserts that McHale fails to illustrate a target transceiver that is different than the subscribers. With respect to this issue, paragraph 2 of the Office Action states:

"2. Regarding claim 1, Applicant states that none of the references cited describe an internet service provider that sends a facsimile message to a target transceiver in the same area code as the internet service provider or sending a message to a target transceiver that is different than the subscribers of the internet service provider. Examiner disagrees with Applicant. McHale teaches that the computer (22) and modem (30) are supported by digital protocol, which is defined as any communication protocol, including TCP/IP and other internet protocols (column 3, lines 45-61), which means that internet access can be provided to a plurality of subscribers and sent to a different target transceiver (column 3, lines 62-67)."

Applicant, however, asserts that it is incorrect to rely on the modem 30 to show the target transceiver. The modem 30 of McHale is associated with a subscriber that sends inbound requests to connect to the central office. The target transceiver of Claim 1, in contrast, is different in that it receives an outbound facsimile from the target server even though the target transceiver is not a subscriber. Thus, the Office Action fails to show that McHale has the unique target transceiver of Claim 1.

Because McHale, fails to describe, teach or suggest sending a message to a target transceiver that is different than the subscribers of the Internet service provider, Applicant respectfully requests allowance of Claim 1.

B. Relaying A Message With A Sender Server

The method of Claim 1 further comprises receiving at the target server a message originated by a sender transceiver. In the process of communicating the message, a sending server receives the message with an inbound communication from the sender transceiver. The sending server then communicates the message to the target server via the Internet.

The target server then directs the message to the target transceiver with an outbound facsimile transmission from the target server to the target transceiver. The outbound facsimile is sent with the modems that receive the in-bound requests for access to the Internet from the subscribers. The modems are further configured to transmit the message as a facsimile transmission from the target server to the target transceiver via the public switched telephone network.

McHale fails to teach these concepts. For the purpose of this response, assume that the sender transceiver is one of the subscribers 12. There is no teaching, however, of a sender server that relays the message to a target server. McHale describes a single server – the central office – not two servers that communicate with each other.

McHale fails to describe, teach or suggest sending a message from a sending server to a target server via the internet and then delivering the message to a target

transceiver via a facsimile communication. Accordingly, Applicant respectfully request allowance of Claim 1.

C. Transmitting Facsimile Messages With Inactive Modems

The message is sent from the target server to the target transceiver as outbound facsimile transmission. In addition, the message is sent with the modems at the target sever that also receive the in-bound requests for access to the Internet from the subscribers. These modems are further configured to transmit the message as a facsimile transmission from the target server to the target transceiver via the public switched telephone network.

The method also comprises determining with a processor whether one or more modem ports at the target server is inactive such that at least one of the modem ports is not in communication with one or more of the subscribers.

Furthermore, the method sends the message as an outgoing facsimile transmission via an available modem and the public switched telephone network to the target transceiver if one of the modem ports is inactive.

With respect to this issue, paragraph 3 of the Office Action states:

"3. Applicant states that none of the references cited teach sending a facsimile message to a target transceiver with an inactive internet access modem. Examiner disagrees with Applicant. McHale teaches that modem (30) is supported by any appropriate protocol which does not limit it to facsimile message protocols (column 3, lines 45-54). McHale also teaches that an available modem, which is a modem that supports any appropriate protocol, is determined and selected to send a message (column 10, lines 6-14)."

Applicant notes that the modem 30 shown in McHale cannot be used to support the rejection of these claim elements. Claim 1 states that the target server sends an outbound message via a plurality of modems. These modems would have to be located in the central office 14. Instead, the Office Action refers to modem 30 which is in a subscriber.

McHale fails to describe an Internet access provider that uses inactive modems to send a message to a target transceiver. Still further, none of the cited references describe, teach or suggest sending a facsimile message to a target transceiver with an inactive Internet access modem located in the target server. Thus, Applicant respectfully requests allowance of Claim 1.

D. A Variable Wait Time When None Of The Modems Are Inactive

If none of the modem ports at the target server are inactive, the method of Claim 1 comprises applying a variable wait time. This wait time is unique in that the duration of the variable wait time is applied based at least in part on historical data, based at least in part on the number of modems, and based at least in part on the number of subscribers.

After the variable wait time, the method determines with a processor whether one or more of the modem ports is inactive. With respect to this issue, paragraph 4 of the Office Action states:

"4. Applicant states that none of the references cited teach a variable wait time for sending an outgoing facsimile based at least in part on the number of subscribers that send in-bound requests to access the internet and a variable wait time for sending a facsimile based on historical data. Examiner disagrees with Applicant. McHale teaches that a time interval before modem (30) should attempt communication with selected modem in modem pool and historical connection information (column 10, lines 27-37)."

Applicant notes that again the Office Action relies on modem 30. However, the modem 30 in McHale is at the subscriber, not the central office.

Unlike Claim 1, McHale fails to describe a variable wait to time applied to modems at the target server for the sending of an outgoing facsimile based at least in part on the number of subscribers that send in-bound requests to access the Internet. Still further, McHale fails to describe, teach or suggest a variable wait time for sending a facsimile based on historical data. Applicant therefore request allowance of Claim 1.

E. Sending Confirmation from the Target Server

The method further sends a confirmation from the target server to the sending server confirming the sending of the message as a facsimile transmission to the target transceiver. With respect to this issue, paragraph 5 of the Office Action states:

“5. Applicant states that none of the references cited teach of sending a facsimile confirmation from the target server to the sending server. Examiner disagrees with Applicant. McHale teaches of sending an acknowledgement to modem (30).”

The acknowledgement of Claim 1 is sent between two servers – from the target server to the sending server. Because the modem 30 in McHale is in a subscriber, the modem 30 does not send an acknowledgement from a first server to a second server.

Because, McHale fails to send a facsimile confirmation from the target server to the sending server, Applicant respectfully requests allowance of Claim 1.

Claims 2, 3, 5-9, and 11

Claims 2, 3, 5-9, and 11 depend from Claim 1 and are believed to be patentable for the same reasons articulated above with respect to Claim 1, and because of the additional features recited therein.

Claim 13

Claim 13 is different in scope from the other independent claims. In particular, Claim 13 is directed to a system for communicating a message via a computer network, the system comprising a target server that provides Internet access services to a plurality of subscribers.

The target server also has a plurality of modems associated therewith that receive in-bound requests from the subscribers for internet access services. Furthermore, the target server and a target transceiver are located within a same local-toll area of a public switched telephone network connected to the target server and the target transceiver.

The target server is configured to receive a message originated by a sender transceiver and communicated to the target server from a sending server. The sending server receives the message from the sender transceiver with an inbound communication.

The sending server communicates the message to the target server via the Internet. And the target server is further configured send the message as an outgoing facsimile transmission to the target transceiver via the public switched telephone network.

Also, the target server determines whether one or more of the modems at the target server is inactive, such that one or more of the modems is not in communication with one or more of the subscribers. The target server is configured to apply a variable wait time when the one or more of the modems is not inactive.

The determined duration of the variable wait time is variably applied based at least in part on historical data and based at least in part on the utilization of the modems.

In addition, the target server is configured to determine whether at least one of the modems is inactive after the variable wait time; and the target server is configured to send the message as an outgoing facsimile transmission to the target transceiver via the modem and the public switched telephone network.

Because McHale fails to teach or suggest these concepts, Applicant respectfully requests allowance of Claim 13.

Claims 14-16

Claims 14-16 depend from Claim 13 and are believed to be patentable for the same reasons articulated above with respect to Claim 13, and because of the additional features recited therein.

Claim 21

Claim 21 is different in scope from the other independent claims. In particular, Claim 21 is directed to a method of communicating a message via a computer network, the method comprising receiving a message from a first transceiver and a first server at a second server. The message is communicated to a second server by the first server wherein the first server receives the message from the first transceiver with an inbound communication.

In addition, the second server and a second transceiver are located within a same local-toll area of a public switched telephone network. Also, the public switched telephone network is connected to the second server and to the second transceiver.

The method of Claim 21 further comprises providing internet access services with the second server to a plurality of subscribers with a plurality of modems connected to the target server. The modems also receive a plurality of in-bound requests from the subscribers for access to the Internet. In addition, the modems are configured to communicate the message to recipients via the public switched telephone network.

In addition, the method of Claim 21 comprises receiving the message from the first server and storing the message at the second server and determining whether one or more of the modems at the second server are inactive such that at least one of the modems is not in communication with one or more of the subscribers.

The method also comprises determining and applying a variable wait time when modems are not inactive. The duration of the variable wait time is applied based at least in part on historical data and based at least in part on a number of the modems.

Furthermore, the method comprises determining availability of the modems after the variable wait time; and if one of the modems is available after the variable wait time, sending the message via an available one of the modems and the public switched telephone network to the second transceiver.

Because McHale fails to teach or suggest these concepts, Applicant respectfully requests allowance of Claim 21.

Claims 22-24

Claims 22-24 depend from Claim 21 and are believed to be patentable for the same reasons articulated above with respect to Claim 21, and because of the additional features recited therein.

NO DISCLAIMERS OR DISAVOWALS

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application.

Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution.

Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

OTHER APPLICATIONS OF ASSIGNEE

Applicant wishes to draw the Examiner's attention to the following application of the present application's assignee.

Serial No.	Filed	Docket No.	Title
11/496,705	07/31/06	MTIPAT.191C1	Method And System For Facsimile Delivery Using Dial-Up Modem Pools

Applicant also understands that the Examiner has access to sophisticated online Patent Office computing systems that provide ready access to, for example, the

specification and drawing publications, pending claims and complete file histories, including, for example, cited art, office actions, responses, and abandonments.

However, if the Examiner cannot readily access the file history of this co-pending application, the Applicant would be pleased to provide any portion of any of the file histories at any time upon specific Examiner request.

CONCLUSION

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. In light of the above remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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